Calendar No. 1006

99TH CONGRESS
2d Session

SENATE

REPORT
99-496

LOWER COLORADO WATER SUPPLY ACT

SEPTEMBER 27 (legislative day, SEPTEMBER 24), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 5028]

The Committee on Energy and Natural Resources, to which was referred to the Act (H.R. 5028) entitled the "Lower Colorado Water Supply Act", having considered the same, reports favorably thereon with amendments to the text and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. Page 1, line 8, strike "only." and insert in lieu thereof: "only: *Provided,* That, the Secretary is hereby authorized, in his discretion, to contract with non-Federal interests for the care, operation, and maintenance of all or any part of this project works, subject to such rules and regulations as he may prescribe."

2. Page 1, line 8, following the word "constructed" insert "in stages as increases in demand warrant and".

3. Page 3, line 7, strike "interest," and insert in lieu thereof "interest, as determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the contract is executed, on the basis of the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest one-eighth of 1 per centum,".

4. Page 3, line 8, strike "municipal and industrial" and insert in lieu thereof: "domestic, municipal, industrial, and recreational".

5. Page 3, line 11, following "by" insert the following: "section 9(c) of the Reclamation Project Act of 1939 (Act of August 4, 1939, ch. 418, 53 Stat. 1187) and by".

6. Page 4, line 9, beginning with the word "through" strike all through the word "supply" on line 14 and insert in lieu thereof:

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"the sum of $1,800,000 plus or minus such amounts, if any, as may be justified by reason of ordinary cost indices applicable to the types of construction involved therein and in addition thereto such sums as may be required for operation, maintenance and replacement of that portion of the project used to supply domestic,".

7. Page 4, following line 19, insert the following new section:

SEC. 4. SAVINGS PROVISION.

Nothing contained in this Act shall be construed to alter, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Water Treaty of 1944 with the United Mexican States (Treaty Series 994, 59 Stat. 1219), the decree entered by the Supreme Court of the United States in Arizona against California, and others (376 U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), or the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501). Nor shall any provision of this Act—

(a) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or streams or over any groundwater resources, or

(b) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

PURPOSE

As ordered reported, H.R. 5028 would authorize the Secretary of the Interior to construct, operate, and maintain the Lower Colorado Water Supply Project, California, and authorize the appropriation of $1.8 million for construction of the project. The Act also authorizes the appropriation of $100,000 annually through fiscal year 1991 for operation, maintenance, and replacement of those project functions serving Federal lands. In addition, H.R. 5028 authorizes the Secretary to enter into water exchange contracts and to encourage water exchange agreements in connection with the project.

BACKGROUND

Section 1(13) of Public Law 96-375 authorized the Secretary of the Interior to conduct an investigation study of the feasibility of obtaining a water supply of up to 10,000 acre-feet annually for existing and potential domestic, recreational, and municipal water users along the Colorado River in California who do not hold water rights or whose water rights are insufficient to meet their requirements. A draft Planning Report/Environmental Assessment was completed in December 1985, and is under review.

The preferred plan as described in the Bureau of Reclamation's "Lower Colorado Water Supply Study" provides for the phased development of up to five wells along the All-American Canal west of Winterhaven, California. The groundwater resource consists of naturally occurring recharge and seepage from the All-American and/

or Coachella Canals. Water pumped from the wells would be discharged into the Canal in exchange for Colorado River water diverted upstream for nonagricultural purposes.

LEGISLATIVE HISTORY

H.R 5028 was introduced on June 12, 1986 by Mr. Lewis of California. The bill was reported by the House Committee on Interior and Insular Affairs (H. Rept. 99-650) on June 23, 1986 and was passed by the House on June 24, 1986. A hearing was held before the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources on July 22, 1986, at which time the C. Dale Duvall, Commissioner, Bureau of Reclamation, Department of the Interior, testified in support of the measure with recommended language changes.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 24, 1986, by majority vote of a quorum present, recommends that the Senate pass H.R. 5028, if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas, 1 nay, as follows:

Yeas	Nays
Mr. McClure	Mr. Metzenbaum*
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Melcher*	
Mr. Bradley*	
Mr. Bingaman*	
Mr. Rockefeller	

* Indicates voted by proxy.

COMMITTEE AMENDMENTS

1. The amendment provides authority for the Secretary of the Interior to contract with non-Federal interests for operation and maintenance of the project works.

2. The amendment conditions construction of project works in response to demand as was proposed in the feasibility study. The amendment ensures that project facilities which are not needed will not be constructed.

3. The amendment establishes the applicable interest rate for repayment purposes. The interest rate prescribed is identical to that which has been previously adopted by the Committee for similar repayment requirements.

4. Conforming.

5. The amendment cites the 1939 Act in order to provide guidelines for contracting and shall not be construed as invoking any provision or requirement of the Federal reclamation law.

6. The amendment provides for indexing of construction costs and permanent authority for the appropriation of operation, maintenance and replacement funds for that portion of the project used to supply water for lands managed by the Federal Government. The House version of the measure did not allow for construction cost indexing and provided only temporary authority for the appropriation of operation, maintenance, and replacement funds. The amendment also provides for a conforming change to the text.

7. The amendment is self-explanatory.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 25, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5028, the Lower Colorado Water Supply Act.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

JAMES BLUM
(For Rudolph G. Penner, *Director*).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5028.

2. Bill title: The Lower Colorado Water Supply Act.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, September 24, 1986.

4. Bill purpose: H.R. 5028 would authorize the appropriation of $1.8 million plus adjustments for inflation to remain available for construction of the Lower Colorado Water Supply Project in California and such sums as may be necessary to operate and maintain the project. The bill would prohibit the Secretary of the Interior from beginning construction on the project until a cost allocation study has been completed and submitted to the Congress and until repayment contracts with non-federal beneficiaries have been executed. The bill would place certain restrictions on the execution of repayment and operation and maintenance contracts, and would

allow the Secretary to contract with nonfederal interests for the operation and maintenance of all or part of the facilities constructed.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated Authorization Level	0.5	0.1	0.1	0.1	0.1
Estimated Outlays	0.4	0.2	0.1	0.1	0.1

The costs of this bill fall within budget function 300.

Basis of estimate: Based on information from the Bureau of Reclamation (BOR), it was assumed in this estimate that only those amounts needed to complete the first phase of the Lower Colorado Water Supply Project would be appropriated by fiscal year 1991 and that the first phase of construction would begin in fiscal year 1987, assuming appropriations are provided early in the fiscal year. It was assumed that the remainder of the amounts authorized in this bill for construction would be appropriated after fiscal year 1991, only if the Bureau of Reclamation determines that the first phase of the project is not sufficient to meet the water delivery requirements set forth in the bill. The BOR expects that additional phases of the project will not be required until 1997. Outlays have been estimated based on information from the Bureau of Reclamation. It is estimated that approximately $0.3 million of the total amount spent on construction in 1987 and 1988, plus interest, will be repaid to the federal government by nonfederal beneficiaries beginning in the fiscal year in which water is first delivered, probably 1988. Because the repayments would be made over a long period, probably 40 years, annual receipts would be small. Approximately two-thirds of any future expenditures for construction would also be repaid by nonfederal beneficiaries.

6. Estimated cost to State and local governments: None.

7. Estimated comparsion: None.

8. Previous CBO estimate: On June 23, 1986, CBO prepared a cost estimate for H.R. 5028, the Lower Colorado Water Supply Bill, as ordered reported by the House Committee on Interior and Insular Affairs on June 18, 1986. The estimates differ as the 1991 authorization level, because the Senate version authorizes appropriation for construction without the 1991 cutoff date in the House version.

9. Estimate prepared by: Theresa Gullo.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 5028.

The Act is not a regulatory measure in the sense of imposing Government-established standards on private individuals and busi-

nesses. However, repayment contracts resulting from the implementation of the project authorization contained in H.R. 5028 will result in significant economic responsibilities on the part of those non-Federal entities responsible for repayment.

No personal information would be collected as a result of enactment and implementation on H.R. 5028. Therefore, there would be no impact on personal privacy.

Other than the normal paperwork resulting from construction and contracting for works authorized by the Act, the exchange contracts authorized by section 1(b)(1) and the study required by section 2(a)(1), little, if any, additional paperwork would result from the enactment of H.R. 5028.

EXECUTIVE COMMUNICATIONS

On July 16, 1986, the Committee requested legislative reports on H.R. 5028 from the Department of the Interior and the Office of Management and Budget. The legislative reports have not yet been received. The Committee will have these reports printed in the *Congressional Record* when they are received. Set forth is the statement presented by C. Dale Duvall, Commissioner, Bureau of Reclamation, at the hearing before the Subcommittee on Water and Power.

Statement of C. Dale Duvall, Commissioner, Bureau of Reclamation, Department of the Interior, Before the Senate Subcommittee on Water and Power, Committee on Energy and Natural Resources on H.R.5028 to authorize the Secretary of the Interior to construct, operate, and maintain the Lower Colorado Water Supply Project, California

July 22, 1986

Mr. Chairman, I am pleased to appear before your committee today to testify in support of H.R.5028.

The Lower Colorado Water Supply Project is an extension and refinement of the existing project authorized by the Boulder Canyon Project Act. H.R.5028 would require exchange agreements among existing project users and certain entities along the Colorado River. The bill would further allow for improved efficiency of project operation by utilizing seepage water. The Lower Colorado River Water Supply Project would pump water from the aquifer beneath the All-American Canal and discharge it into the Canal in exchange for water which is currently diverted or pumped from the Colorado River floodplain upstream of the Canal diversion.

The purpose of the Lower Colorado Water Supply Project is to meet the water supply needs, in excess of contracted amounts, of certain nonagricultural water users along the Colorado River in California. The Central Arizona Project (CAP) became operational in 1985. As Arizona begins using its full entitlement of Colorado River water within the next five years, surplus water presently being used by water users in California will no longer be available. California's apportionment of Colorado River water is fully allocated. A water-shortage condition would require the Secretary of the Interior to enforce termination of noncontract use to meet existing contracts. However, through an exchange agreement with a present water user, it would be possible to provide these users in California with a replacement supply. The project would provide a means for those water users to contract for the use of up to 10,000 acre-feet of Colorado River water annually through an exchange agreement with a non-Federal entity.

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The water users in California include the city of Needles, the town of Winterhaven, the Bureau of Land Management (BLM), and various private water users. Needles has a water right to 1,500 acre-feet of annual diversion. Needles is using water in excess of its present water right. Winterhaven has a water right; however, its full entitlement under that right has not been resolved. The BLM has leased land to concessioners for recreational purposes which require a water supply. The BLM has a Secretarial Reservation which sets aside up to 1,000 acre-feet per year of surplus Colorado River flows. That reservation will be of little or no value as soon as the CAP becomes fully operational because surplus flows will be unlikely. The private uses amount to about 350 acre-feet per year.

The potential project considered in H.R.5028 has been under investigation for four years to identify and examine alternative solutions. Study projections for future water needs of the water users indicate that, by the year 2020, over 5,500 acre-feet per year of consumptive use will be required in excess of present water rights. Due to the uncertainty in forecasting population growth, a plan has been formulated to allow for staged development, increasing in capacity up to 10,000 acre-feet per year as future needs develop.

A draft Planning Report/Environmental Assessment was completed in December 1985 and distributed for review and comment by local interests. That report will be finished in the near future. Preliminary results are only available at this time. However, the preliminary results of the analyses indicate that development of a well field could be economical and feasible. The final report will identify the ratio of benefits to costs but preliminary indications are that it will be well over unity.

The principal features of the small-scale well field include two to five wells and a discharge pipeline to the All-American Canal. An exchange agreement with an All-American Canal user would be necessary. The initial stage of development would be two wells, each of capacity 3.2 cubic feet per second, drilled to a depth of 420 feet. The total estimated cost, including all five wells is $1,657,000, based on January 1985 prices. The appropriation ceiling in the

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legislation is $1.8 million without indexing provisions. With staged construction of up to five wells as the need develops, cost indexing provisions would be appropriate to allow for the potential increased costs of construction at a future date. We recommend the bill be modified to provide for indexing.

In accordance with the Water Supply Act of 1958, project costs for municipal and industrial purposes would be repaid, with interest. In our opinion, the intent of Congress is to include the domestic water users in the repayment of project costs by non-Federal interests. Therefore, it is recommended that Section 2.(a)(2) and Section 3 of the bill be modified to state that domestic water users would contract and repay their share of project costs at the same rate as the municipal and industrial interests.

Since water is an indispensable commodity, the assured supplies of contract water would relieve a serious concern of the affected individuals and communities and would provide a more secure and stable economic environment. The first stage of the project could be constructed within one year after receiving construction authorization and funding. The additional wells could be drilled as the need develops. A small-scale well field plan would provide the most immediate solution to the water supply problems and needs of the water users.

The Department of the Interior supports the legislation but prefers language that would allow for staged development with cost indexing because the need for the full 10,000 acre-feet per year will not be realized in the near future. If five wells were drilled at this time, the water users would be required to repay the costs of a supply that is not presently needed. The Department recommends that the project be authorized. It is the expectation of the Department that, if authorized, we will proceed under current cost-sharing policies and procedures. I will be happy to answer any questions that you may have about this matter.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law would be made by the bill, H.R. 5028, as reported.

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Calendar No. 1008

99TH CONGRESS
2d Session

SENATE

REPORT
99-498

AMENDING THE FIRE ISLAND NATIONAL SEASHORE ACT OF 1964

SEPTEMBER 27 (legislative day, SEPTEMBER 24), 1986.—Ordered to be printed

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Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2483]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2483), to amend the Fire Island National Seashore Act of 1964, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

S. 2483, as reported, would amend the Fire Island National Seashore Act to clarify the authorities of the Federal, State and local governments with regard to management of private lands within the Seashore.

BACKGROUND AND NEED

The Fire Island National Seashore, New York, was established by Congress in 1964, to preserve and protect one of the last relatively unspoiled natural barrier islands in the northeast for the use and enjoyment of future generations. The Seashore was part of a new generation of National Parks which were created out of a combination of privately and publicly owned lands. Congress very deliberately chose to create a park which incorporated within its boundaries well-defined communities. Private property could be retained by its owners in designated locations as long as private property usage remained compatible with protection, use, and enjoyment of Seashore lands. To assure compatibility with park protection, a mechanism for controlling the use of private property within the Seashore was established. This procedure combines the

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local zoning authorities of the Towns to protect health, safety, and welfare with the Trust Responsibility of the Secretary to assure the perpetuation of park resources. The Secretary was required by the Act to establish standards for the development of local zoning ordinances and to approve such ordinances if they conform to the standards. Private property developed in conformance with those ordinances is exempted from condemnation as long as it remains in compliance. The Secretary may revise those standards to reflect changing conditions.

The Fire Island National Seashore Act has been amended with respect to private property management issues in 1978, and in 1984.

In 1978, a Dune District was established to control development on the most fragile portions of a barrier islands system. Within the Dune District, or dune setback zone, no new construction may occur. Only houses that were constructed in accordance with zoning ordinances in effect at the time they were built are eligible for reconstruction in the event of loss by flood and erosion.

In 1984, property owners concerned about adverse development, requested that the enforcement authority of the National Park Service be strengthened. Congress responded by refashioning the condemnation authority of the Secretary to enable him to resell, with protective covenants, property condemned because of proven violations of zoning standards. The sales proceeds may be retained by the Park in a revolving fund for use in implementing the provisions of this Act. The amendments further specifically authorized the use of injunctions as a means of quickly responding to adverse development. Finally, Congress established new standards for the Secretary to employ when developing zoning guidelines. The new guidelines are to provide that development within the Seashore shall seek to reconcile population density within the Seashore with the protection of the natural resources of the seashore.

In 1972, Congress enacted the Coastal Zone Management Act (CZMA). The purpose of the 1972 legislation was "to preserve, protect, develop and, where possible, restore or enhance the resources of the Nation's Coastal Zone for this and succeeding generations."

Pursuant to CZMA, the New York Legislature enacted the Coastal Erosion Hazard Areas Act of 1981 (CEHA) and in 1984 began identifying erosion hazard zones within the State including the Fire Island National Seashore. Specific regulations were developed for application in these zones.

New York's Coastal Erosion Hazard Area Management Plan (CEHAMP) is administered by the Department of Environmental Conservation (DEC). The State plan, as proposed, would conflict with elements of the Fire Island National Seashore Act and management by the National Park Service pursuant to the Act. The State plan prohibits reconstruction of buildings suffering a 50 percent or greater loss due to flooding, erosion, or fire within the dune setback zone. Federal standards permit reconstruction of buildings which were originally in conformance with zoning, unless rebuilding would be destructive of park resources. Of course, the Committee is aware that the Federal standards could change in this regard to more closely reflect the State's position.

In 1964, the Congress established the Seashore and installed the National Park Service as manager of lands public and private within the boundaries. In 1972, the Congress gave the States broad powers to regulate their coastal zones. In the case of Fire Island National Seashore, this amendment would clarify which regulation would have primacy, should a conflict persist. The amendment reemphasizes the intent of Congress that management authority be vested in the National Park Service within the external boundaries of the Fire Island National Seashore.

Legislative History

S. 2483 was introduced by Senator Moynihan and Senator D'Amato on May 21, 1986. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on the bill on June 20, 1986.

At a business meeting on September 17, 1986, the Senate Committee on Energy and Natural Resources ordered S. 2483 favorably reported without amendment.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on September 17, 1986, by unanimous voice vote of a quorum present recommends that the Senate pass S. 2483, as described herein.

Section-by-Section Analysis

S. 2483 amends section 3 of the Act of 1964, by adding a new subsection (h). Subsection (h) states that within the Seashore any matter that is covered by zoning regulations developed by the Federal-Town process shall be governed exclusively by those ordinances in the event of conflict with other Federal or State laws.

The Committee believes that the language is a reaffirmation that the Seashore should be managed and administered in accordance with the Fire Island National Seashore Act of 1964, as amended, notwithstanding the Coastal Zone Management Act of 1972, as amended. Further, the Committee fully expects the Secretary's guidelines to assure that park resources are fully protected. Nothing in this Act would preclude the Secretary from adopting regulations more restrictive than those adopted by the State.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 18, 1986.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2483, a bill to amend the Fire Island National Seashore Act of 1964, as ordered reported by the Senate Committee on

Energy and Natural Resources, September 17, 1986. Enactment of this bill is not expected to result in any cost to the federal government or to state or local governments.

S. 2483 would clarify certain authorities of federal, state and local governments relating to the management of private lands within the Seashore. Specifically, the bill would provide that local zoning ordinances approved by the Secretary of the Interior shall govern matters affecting private lands. This provision is not expected to affect the Department of the Interior's administration of the area and therefore will not have any federal cost impact. It is possible that this bill will have the effect of superseding certain state zoning regulations, but this is not likely to result in any out-of-pocket expenses to the state.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner, *Director*).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2483. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2483, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports received by the Committee from the Department of the Interior and the Department of Commerce setting forth executive agency recommendations relating to S. 2483 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 8, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 2483, a bill "To amend the Fire Island National Seashore Act of 1964."

We have no objection to the enactment of S. 2483.

S. 2483 would amend section 3 of the Act of September 11, 1964, which established the Fire Island National Seashore. Section 3 of the 1964 Act authorizes the Secretary to issue regulations specifying standards for local zoning ordinances which must meet his approval. Under other provisions of the 1964 Act, the Secretary's au-

thority to acquire improved property within the Seashore by condemnation is suspended so long as local zoning regulations approved by the Secretary are applicable to such property.

S. 2483 would provide that any matter covered by the Secretary's zoning standards shall be governed exclusively by the local zoning ordinances adopted by the towns and approved by the Secretary. We understand that the purpose of S. 2483 is to assure certain owners of improved property within the National Seashore that State-imposed coastal zone regulations on use and development of their property will not apply to improved properties that are already subject to federally-approved zoning ordinances. We understand that the proposed State regulations would not permit homeowners located within the State's dune protection zone to rebuild if a storm were to destroy their homes. Within the Federal dune protection zone, rebuilding depends on conformance to the Secretary's standards and regulations in force.

The Department is satisfied that the Secretary's current standards and the towns' local ordinances provide adequate protection for the resources of the seashore. Although the Federal standards and zoning now in place would permit more rebuilding than the proposed State regulations, we do not believe the difference is crucial to our management of the seashore. Moreover, we have the authority to revise our standards and adjust the boundaries of the dune protection zone (the latter requires Congressional approval) if a greater level of protection is needed to protect the park. In fact, we are currently remapping the boundaries of the Federal dune district.

The amendment contained in S. 2483 would not hinder these processes. Rather, it would merely reaffirm Congressional intent that the regulations, ordinances, and dune protection zones that evolve from these processes shall be controlling within the boundaries of the Fire Island National Seashore.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

P. DANIEL SMITH,
Assistant Secretary.

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, September 2, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Commerce regarding S. 2483, a bill to amend the Fire Island National Seashore Act of 1964, and, specifically, its relationship to the Coastal Zone Management program.

The Department of Commerce has no objection to S. 2483.

S. 2483 would amend section 3 of the Fire Island National Seashore Act of 1964 (16 U.S.C. § 459e-2), which authorizes the Secre-

tary of the Interior to issue regulations specifying standards for local zoning ordinances which must meet his approval. It apparently is intended to assure private property owners within the boundaries of the Seashore that they will be subject only to local zoning regulations which meet the standards set by the Secretary of the Interior for construction setbacks and rebuilding, and that they will not be subject to any more restrictive standards such as those imposed by New York State under its Coastal Erosion Hazard Areas Act.

As stated by the Department of the Interior in testimony presented before the Committee on June 20, 1986, the bill would have the practical effect of allowing more houses which may be destroyed by storms and erosion to be rebuilt within the Seashore than would be possible under State regulation which establishes a wider dune protection zone. The apparent legal effect of the bill, therefore, would be to nullify State regulations that may be more stringent than Federal zoning standards within the Fire Island National Seashore.

One of the policies of the Coastal Zone Management Act (CZMA) is to encourage the States to exercise their full authority over the lands and waters in the coastal zone (section 302(i)) and to adopt State management programs which should at least provide for the protection of natural resources, including beaches and dunes and the management of coastal development to minimize the loss of life and property caused by improper development in erosion-prone areas (sections 303(2) (A) and (B)). New York State's Coastal Erosion Hazard Areas Act (CEHAA) responds to these policies in the CZMA and is incorporated into its Federally approved coastal management program. The apparent effect of S. 2483 would be to supersede the requirements of the CEHAA within the seashore in cases where the State's coastal zone requirements exceed the requirements of local zoning ordinances that meet DOI standards. (Although local zoning ordinances would still presumably be adopted consistent with State law, including the CEHAA, the effect of the bill would be to require compliance *only* with those ordinances that meet the less stringent Federal standards set by the Secretary of the Interior under the Seashore Act.)

Although Congress provided the coastal States with authority to regulate development within their coastal zones by enactment of the CZMA, that delegation obviously can be superseded by subsequent enactment of legislation such as S. 2483. Since S. 2483 would apply only to the area within the Fire Island National Seashore, which is a small portion of the New York State coastal zone, we believe its enactment would not have any consequential effect on the continuing approval of the New York State coastal management program. Apart from the preemption of more stringent State regulation, in our view S. 2483 would not have any other effect on the New York State coastal management program; the character of the land within the Seashore would remain a mix of private and Federal landholdings and all other provisions of the New York State coastal management program would continue to apply.

We have been advised by the Office of Management and Budget that there is no objection to our submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

DOUGLAS A. RIGGS.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2483, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 88-587

(78 Stat. 930)

AN ACT To establish the Fire Island National Seashore, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for the purpose of conserving and preserving for the use of future generations certain relatively unspoiled and undeveloped beaches, dunes, and other natural features within Suffolk County, New York, which possess high values to the Nation as examples of unspoiled areas of great natural beauty in close proximity to large concentrations of urban population, the Secretary of the Interior is authorized to establish an area to be known as the "Fire Island National Seashore".

* * * * * * *

SEC. 3. (a) * * *

* * * * * * *

(g) Notwithstanding any other provision of this Act, the Secretary of the Interior, acting through the Attorney General of the United States, may apply to the United States District Court for the Eastern District of New York for a temporary restraining order or injunction to prohibit the use of, including construction upon, any property within the seashore in a manner that—

(1) will cause or is likely to cause significant harm to the natural resources of the seashore, or

(2) is inconsistent with the purposes for which the seashore was established.

Except to the extent the Court may deem necessary in extraordinary circumstances, no such order or injunction shall continue in effect for more than one hundred and eighty days. During the period of such order or injunction, the Secretary shall diligently and in good faith negotiate with the owner of the property to assure that following termination of the order or injunction, the inconsistent use is abated or the significant harm to the natural resources is mitigated.

(h) Within the boundaries of the Seashore, notwithstanding any other authority of Federal or State law, any matter that is covered

by regulations of the Secretary under subsection (a) shall be governed exclusively by the ordinances approved in accordance with subsection (c).

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